City of Lafayette

DRAFT City Council Special Metting Minutes

Lafayette Library and Learning Center – Art & Science Discovery Center
3491 Mount Diablo Boulevard, Lafayette, California

March 28, 2025
8:30 a.m.

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4. At the time and date of the meeting, please click this URL to join the webinar:
https://us02web.zoom.us/j/89008805648?pwd=ODQxRGxzaGNHSWVITUVFalFuUHBIZz09
Passcode: **426199** Or join by phone: Dial **1 669 900 9128**
Webinar ID: **890 0880 5648** Passcode: **426199**

1. CALL TO ORDER – 8:30 A.M.

Mayor Candell called the Special City Council meeting to order at 8:30 a.m.

2. ROLL CALL

Present: City Council: Mayor Candell, Vice Mayor Anduri; Councilmembers Cervantes, Dawson, and McCormick

Absent: None

Staff Present: Niroop Srivatsa, City Manager; Greg Wolff, Planning and Building Director; Mala Subramanian, City Attorney; Joanne Robbins, City Clerk

3. Disclosure and/or Take Action on Remote Participation due to Just Cause or Emergency Circumstances Pursuant to AB 2449 (Gov. Code section 54953(f).)

4. ADOPTION OF AGENDA

ACTION: It was M/S/C (Anduri/Dawson) to adopt the agenda. Vote: 5-0 (Ayes: Candell, Anduri, Cervantes, Dawson, and McCormick; Noes: None).

5. PUBLIC COMMENTS (For Items not on the Agenda) – None.

6. STAFF REPORT

A. Niroop Srivatsa, City Manager and Greg Wolff, Planning and Building Director
Consideration of Exclusive Negotiating Rights Agreement and granting the City Manager authority to execute the agreement for 949 Moraga Road.
Recommendation: Staff recommends that the City Council approve the Exclusive Negotiating Rights Agreement and authorize the City Manager to execute the agreement.

City Manager Srivatsa stated the City has been meeting with Sunflower Hill and SAHA for the past month going over details of an ENRA (Exclusive Negotiating Rights Agreement which is before the Council.

Planning and Building Director Greg Wolff said SAHA and Sunflower Hill were approved for a project which ultimately did not come to fruition and they have been continuously looking for other opportunities to place an important housing project in the community for individuals with intellectual and developmental disabilities. The City's Housing Element Program 6-3.G commits the City to make the land available for affordable housing.

The program layout calls for outreach to potential affordable housing developers and soliciting Requests for Proposals, evaluating those, choosing a development partner and moving forward, and this is an opportunity to forego that lengthier timeframe and more investment on staff's part. SAHA is a very well-known affordable housing developer in the Bay Area and Sunflower has successful projects in two neighboring communities.

Sunflower Hill / SAHA has been working, with the City assisting, in preparing the application for HCD's Super NOFA, a super-consolidated Notice of Funding Availability, and this is due within about three weeks. There are certain terms which remain outstanding which will be negotiated, but foremost would be the price, which staff is recommending it be conveyed to Sunflower / SAHA for $1 if they secure funding to build the project. This is consistent with the policy direction and goals that the Council set out in the Housing Element. The purpose of donating it is foremost to making the project as high scoring and likely to achieve funding which is scarce. It is surplus land and also donated from the City, and local funds are leveraged in their application which are very important factors.

Staff has put together the draft agreement which satisfies HCD's application requirements for site control for purposes of the Super NOFA and he said he was available for questions.

Councilmember McCormick referred to the duration and timing of the agreement where something must happen within one year, noting there is also a mechanism for extensions. He asked Mr. Wolff to explain what that one-year deadline entails and what the City should expect.

Mr. Wolff explained that the City has a relatively compressed timeframe for action under the State and HCD. The Housing Element extends to 2031; however, those units must be completed by 2031. Therefore, to complete units by that timeframe to be counted towards the current 6th cycle, action needs to be taken quickly. The goal is to commit the property to affordable housing, gives the opportunity to HCD and other funding sources, but not commit it long-term and not have any action taken. The one-year timeframe seems reasonable for both parties as an initial timeframe. It could be extended with good reason and good opportunities to find other funding or a second "bite of the apple" from State funding. But, if is an uncertain future with respect to funding from the State for affordable housing.

Councilmember McCormick said there was some public comment worried about the lack of parking, the trade-off's, and why the City is doing this for $1, as it is a viable asset. He asked and confirmed with Mr. Wolff that the thought of the City selling that property to the developer for $1 will significantly improve the chances of housing being built. Mr. Wolff added that it is the nature of building affordable housing that there needs to be support for that largely from public entities, and this is how the system is designed.

Vice Mayor Anduri asked if the Council saw Bob McClain's email from yesterday. He makes a point on the scoring criteria that the applicant gets one point if the disposition is discounted at least 20% or more from the property's current appraised value. He states that if the City were to sell it for $2.3 million instead of $1, this is most likely a 20% discount, so the applicant would get one point. If the City goes down the road it is going down, the applicant would get two points. So, there is only one point difference between the City selling for what they paid for it and basically giving it away or donating it. He makes the point that one point out of 100 really is not critical, and he asked staff to comment on that.

Mr. Wolff said Mr. McClain's re-statement of this criteria is accurate; the one point versus the two points. He would disagree with the one point is not significantly meaningful because in the competition for these scarce dollars, one point can make the difference between being funded and not being funded. Sunflower Hill, Eden Housing, and SAHA has had this experience with applying to the State and being a top scoring application but still not being funded because of one or two points. Every point is very important.

Vice Mayor Anduri asked if it is correct to say that anything that the Council is approving today or that will be signed as this is negotiated, none of that impacts how the City characterizes the funding on the City's records. Mr. Wolff confirmed that the City still has the ability through the budget.

City Attorney Mala Subramanian said she thinks this issue would need to be resolved prior to disposition of the property which would take some time. The agreement would need to be negotiated. There would have to be a purchase and sale, so there is time to make those decisions before there is an actual disposition of the property.

Mayor Candell said if and when this gets exercised, she asked if the Council will see the sale or she asked if staff will report it just happened. Ms. Srivatsa said the details will return to the Council. This is just the agreement for the applicant to submit their application and staff will then start working on other details.

Councilmember Cervantes said his understanding is that during this process, the site is still available for its current use, and the developer has the right to enter to do studies. He asked if it will just continue on until such time construction starts. Mr. Wolff confirmed.

Mayor Candell opened the public comment period.

BOB MCCLAIN said his main concern is the City made a commitment about the parking funds and the City ends up moving housing funds into the parking fund to reimburse that. If the City decides it wants to use the parking funds for something other than off-street parking, there should be a public process where the public and especially merchants provide comments. He thinks that obligation still stands for this. It would be nice to have a little more "umph" behind selling it for $1 which is not very much. He hopes if the Council is making that decision, it has more information than just two sentences in the staff report.

Lastly, the staff report states this is going to be 100% affordable housing but he did not notice anything in the agreement that states that. The agreement simply listed the number of units and he questioned what would keep Sunflower Hill from building the 40 units but will partner with a for-profit and develop another 40 units on top of that. If the goal of the City is to keep it 100% affordable, it would be worthwhile having that language in the agreement.

Mayor Candell said she also has been hearing from others about the parking fund and how this was bought with those funds and now it is affordable housing. The Council has heard on many occasions how important these points are. They cannot tie it to the affordable housing on another project on Oak Hill. These are things that would get them disqualified, and this is why the outright donation is how the process works right now for affordable housing. The City must have matching funds for everything to work out funding-wise to develop these projects. She agreed it is a tough situation and it is a lot of money. She is very comfortable spending it and selling it for $1 just because these opportunities are so rare. The community is very supportive of it right now, as well, and she is committed. She thinks it would be harmful, given the public sentiment, if they did not do everything the City could to make this happen.

Councilmember McCormick echoed these sentiments. The project is rare, the location is tough for housing generally speaking and there are limited transportation needs by the residents, and the need in the community is great. He shares the concerns of business owners and the City will make sure parking stays at the top of their minds, and this will be the next thing to work on.

Councilmember Dawson agreed with Mr. McClain's comment about ensuring it is 100% affordable housing on this site is very important to include in the agreement.

City Attorney Mala Subramanian noted the fifth recital defines the project as 48 affordable housing units so it is addressed. Through the negotiation process, they will define the level of affordability, but the project is already defined as affordable housing units.

Councilmember Cervantes emphasized the highly competitive nature of the Super NOFA funding process, comparing it to the Olympics, where a fraction of a point can determine whether a project succeeds or fails. He acknowledged that selling the 949 Moraga Road lot for $1 may not seem ideal, but he believes it is a necessary step to give the affordable housing project a real chance at securing funding. Without this commitment, the project might not even be competitive in the funding process.

Councilmember Cervantes highlighted the bigger picture regarding affordable housing funding, emphasizing that the funding pipeline is drying up at both the federal and state levels. Drawing from his conversations with Goldfarb and Lipman, a housing finance law firm, and his experience on a non-profit housing board, he noted that prospects for future funding are uncertain. He described this as possibly the "last train leaving the station" for affordable housing funds, making it critical for the City to act now. Given this urgency, he supports the $1 sale, believing it is a necessary step to ensure the project has a real shot at success.

Councilmember Cervantes broke down the density calculations for the site, explaining how the original Housing Element projection of 23 units was determined. This site is three-quarters of an acre in an area zoned for 35 dwelling units per acre. The Housing Element density factor of 88% was applied, leading to the 23-unit estimate. However, the current proposal is for 48 units, well above the Housing Element figure, demonstrating how density bonuses and creative planning can significantly increase housing capacity. He acknowledged that some critics have raised concerns about exceeding Housing Element estimates, but emphasized that projects like this can achieve much higher density than originally projected. He pointed out that this flexibility is crucial when debating appropriate density factors and voiced full support of maximizing density to make the project as successful as possible.

Councilmember Dawson agreed with whatever the City can do to provide this opportunity for this population, which is an immense bonus.

Mayor Candell agreed and suggested a motion.

ACTION: It was M/S/C (McCormick/Cervantes) to approve the Exclusive Negotiating Rights Agreement and authorize the City Manager to execute the agreement. Vote: 5-0 (Ayes: Candell, Anduri, Cervantes, Dawson, and McCormick; Noes: None).

7. PUBLIC COMMENTS (For Items on the closed Session)

LIBBY HENRY emphasized that the Housing Action Coalition's lawsuit against the City is frivolous and baseless, especially now that the Housing Element has been certified by HCD. She urged the Council to seek public input on how to respond to the lawsuit and push back aggressively. She pointed out that the claims against the City are false, stating that the certified Housing Element proves compliance with State law. She also criticized the Coalition's reasoning, particularly any assumptions about the City's financial standing based on its demographics, calling such arguments misguided and offensive. Ms. Henry encouraged the Council to fight the lawsuit, similar to how San Mateo is still defending itself against a similar challenge. She stressed that Lafayette has acted in good faith, followed the law, and upheld its responsibilities, and that the City's character is worth defending against what she sees as malicious attacks.

Mayor Candell clarified that the City's Housing Element has not yet been certified by HCD, but should be hopefully any day.

8. CLOSED SESSION

Mayor Candell adjourned the meeting to Closed Session at 8:57 a.m. to consider the following matter:

Conference with Legal Counsel – Existing Litigation
Government Code Section 54956.3
Housing Action Coalition v. City of Lafayette
Contra Costa Superior Court Case No. N25-0512

REPORT OF CLOSED SESSION

Mayor Candell reconvened the special meeting at 9:16 a.m. and announced that no reportable action was taken in Closed Session.

9. ADJOURNMENT – 9:16 a.m.

APPROVED:

_____
Susan Candell, Mayor

ATTEST:

_____
Joanne Robbins, City Clerk